

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF PLANNING



Office of the Director

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Memorandum

TO: District of Columbia Zoning Commission

FROM: *HSF*
Harriet Gregning, Director
Office of Planning

DATE: February 2, 2007

SUBJECT: Preliminary Report and Pre-Hearing Statement – Zoning Commission Case 07-03
Proposed Text Amendment to Clarify § 401.1 for Minimum Lot Dimensions in the R
Districts

This report serves as the Prehearing Filing required by 11 DCMR § 3013 as a prerequisite to the advertisement of this proposed text amendment.

PROPOSAL

The Office of Planning (OP) proposes a text amendment to the Zoning Regulations to clarify the intent of Section 401.1 of 11 DCMR regarding minimum lot dimensions.

RECOMMENDATION

The Office of Planning believes that the proposed text amendment will help clarify the intent of the section and prevent the unintended conversion of non-conforming rowhouses into more intensive uses. **The Office of Planning recommends that the Zoning Commission setdown for public hearing the proposed zoning text amendment to 11 DCMR, Section 401.1 to clarify lot dimension requirements. OP also recommends that this application be scheduled for hearing on April 5, 2007 in conjunction with ZC #06-47 which also deals with Section 401. Scheduling this text amendment for hearing on the same date may require a waiver of rules by the Commission.**

BACKGROUND

Section 401.1 of the zoning regulations allows for the expansion of pre-1958 buildings when the lot does not meet lot area or width requirements but does comply with all other provisions of the regulations. On January 9, 2007, the Board of Zoning Adjustment granted an appeal that found, in part, that Section 401.1 is not limited to an expansion of a building under its existing use, but can be accompanied by a change to a use that would have otherwise required a greater lot area or lot width than the original use. In this setdown report OP analyzes the implications of this ruling and suggests language that would clarify the meaning and intent of Section 401.1

EXHIBIT NO. 1
CASE NO. 07-03
ZONING COMMISSION
District of Columbia

ANALYSIS

The existing language of Section 401.1 reads as follows:

401.1 Except as provided in chapters 20 through 25 of this title, in the case of a building located, on May 12, 1958, on a lot with a lot area or lot width, or both, less than that prescribed in § 401.3 for the district in which it is located, the building may not be enlarged or replaced by a new building unless it complies with all other provisions of this title.

This section as written was intended to protect owners of existing buildings that were made non-conforming by the zoning regulations from being unable to expand their buildings. It explicitly allows a structure that is on a non-conforming lot to be expanded when it is otherwise in full compliance. The recent BZA appeal brought into question whether or not a building owner could combine a use change with the expansion allowed under 401.1. It is the Office of Planning's position that it was not the intent of this section to allow a building to change to a use that would require more than the existing lot dimensions.

Section 401.1 only applies when a building is being expanded. A change of use on a non-conforming lot without a building expansion would require the new use to pursue a variance in order to locate on a lot not meeting the dimension requirements. Therefore a conflict exists if the same change in use is allowed to proceed as a matter-of-right simply because the building is getting bigger.

For example, in the R-4 district both churches and dormitories are allowed as a matter-of-right. Both fall into the "all other structures" category of Section 401.3 requiring 4,000 square feet of lot area. On a lot less than 4,000 square feet, it would require a variance to change a church to a dormitory or vice versa. However, without clarification of Section 401.1, the section could be read to negate the specific lot area requirements when an addition is put on so that adding on to the church to make a larger dormitory on the same lot would be a matter-of-right.

OP does not feel that this is the intent of the section and proposes a text amendment to provide consistency in Section 401.

PROPOSAL

The following text amendment is recommended:

401.1 Except as provided in chapters 20 through 25 of this title and in the second sentence of this subsection, in the case of a building located, on May 12, 1958, on a lot with a lot area or lot width, or both, less than that prescribed in § 401.3 for the district in which it is located, the building may not be enlarged or replaced by a new building unless it complies with all other provisions of this title. Notwithstanding the above, the lot area requirements of § 401.3 must be met when the building is being converted to a use that would require more lot area or lot width than is on the building's lot.

RECOMMENDATION

This clarification of the zoning ordinance language is necessary for consistency in Section 401 and to clarify the intent of Subsection 401.1. OP supports this clarification and recommends that it be setdown for a public hearing.

EM/tp